

## **REMARKS**

### **I. Introduction**

In view of the foregoing amendments and the following remarks, it is respectfully submitted that the present application is in condition for immediate allowance, and reconsideration is respectfully requested.

### **II. Rejection of Claims 11, 12, and 14 to 17 Under 35 U.S.C. § 102(e)**

Claims 11, 12, and 14 to 17 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent Application Publication No. 2007/0046148. It is respectfully submitted that U.S. Patent Application Publication No. 2007/0046148 does not anticipate the present claims for at least the following reasons.

U.S. Patent Application Publication No. 2007/0046148 published on **March 1, 2007** from U.S. Patent Application Serial No. 10/578,902, which is the national stage of PCT/DE2004/001980, having an international filing date of **September 7, 2004**. PCT/DE2004/001980 was **not** published in English. Rather, PCT/DE2004/001980 was published as WO 2005/053046 in **German**. Accordingly, U.S. Patent Application Publication No. 2007/0046148 does **not** constitute prior art against the present application under 35 U.S.C. § 102(e) or otherwise. In this regard, the Examiner's attention is respectfully directed to, **e.g.**, M.P.E.P. § 706.02(f)(1), to wit:

If the international application was filed on or after November 29, 2000, but did **not** designate the United States or was **not** published in English under PCT Article 21(2), do **not** treat the international filing date as a U.S. filing date for prior art purposes. In this situation, do **not** apply the reference as of its international filing date, its date of completion of the 35 U.S.C. 371(c)(1), (2) and (4) requirements, or any earlier filing date to which such an international application claims benefit or priority. The reference may be applied under 35 U.S.C. 102(a) or (b) as of its publication date, or 35 U.S.C. 102(e) as of any later U.S. filing date of an application that properly claimed the benefit of the international application (if applicable). (emphasis in original).

In view of the foregoing, withdrawal of this rejection is respectfully requested.

**III. Rejection of Claims 13, 18, and 20 Under 35 U.S.C. § 103(a)**

Claims 13, 18, and 20 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent Application Publication No. 2007/0046148 and U.S. Patent No. 6,274,967. As mentioned above, U.S. Patent Application Publication No. 2007/0046148 does not constitute prior art against the present application. Accordingly, withdrawal of this rejection is respectfully requested.

**IV. Rejection of Claim 19 Under 35 U.S.C. § 103(a)**

Claim 19 was rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent Application Publication No. 2007/0046148, U.S. Patent No. 6,274,967, and U.S. Patent No. 6,670,866. As mentioned above, U.S. Patent Application Publication No. 2007/0046148 does not constitute prior art against the present application. Accordingly, withdrawal of this rejection is respectfully requested.

**V. Conclusion**

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

Date: May 14, 2008

By: /Clifford A. Ulrich/ Reg. No. 42,194 for:  
Gerard A. Messina  
Reg. No. 35,952

KENYON & KENYON LLP  
One Broadway  
New York, New York 10004  
(212) 425-7200  
**CUSTOMER NO. 26646**